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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CHRISTINA REEVES DUWORS, an)
11 individual, by herself and on behalf of all)
12 others similarly situated,)
13 No.
14)
15 Plaintiff,)
16)
17 Washington State Court, King County,
18 Cause No. 10-2-35173-6 SEA
19)
20 DEFENDANT TRACFONE
21 WIRELESS, INC'S NOTICE OF
22 REMOVAL OF ACTION PURSUANT
23 TO 29 U.S.C. §§ 1332, 1441, 1446
24 AND 1453
25)
26 (DIVERSITY JURISDICTION --
 CLASS ACTION FAIRNESS ACT)
27

28 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

29 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and
30 1453, Defendant TracFone Wireless, Inc. ("TracFone") hereby removes to this Court the
31 state-court action described below.

32 STATEMENT OF JURISDICTION

33 This is a civil action for which this Court has original jurisdiction under 28 U.S.C. §
34 1332, and is one that may be removed to this Court by TracFone pursuant to 28 U.S.C. §§
35 1441 and 1332(d)(2)(A) for the reasons set forth below.

36
37 DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
38 OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
39 §§ 1332, 1441, 1446 AND 1453 - 1

40 111655.0389/1928227.1

41 LANE POWELL PC
42 1420 FIFTH AVENUE, SUITE 4100
43 SEATTLE, WASHINGTON 98101-2338
44 206.223.7000 FAX: 206.223.7107

1 **BASES FOR DIVERSITY AND REMOVAL**

2 1. On October 5, 2010, Plaintiff Christina Duwors filed a purported class action
3 in the Superior Court of the State of Washington in and for the County of King entitled
4 *CHRISTINA REEVES DUWORS, an individual, by herself and on behalf of all others*
5 *similarly situated, Plaintiff, v. TRACFONE WIRELESS, INC., a Delaware corporation; and*
6 *WAL-MART STORES, INC., a Delaware corporation; Defendants; Case Number 10-2-35173-*
7 *6 SEA.*

8 2. On October 6, 2010, Plaintiff filed a First Amended Class Action Complaint
9 (the “First Amended Complaint” or “FAC”).

10 3. On October 7, 2010, pursuant to RCW 4.28.180, TracFone was served with the
11 Summons, First Amended Complaint, Order Setting Civil Case Schedule, and discovery
12 requests. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings,
13 and orders served upon TracFone as well as plaintiff’s original complaint that was not served
14 are attached to this Notice of Removal as Exhibit 1. Pursuant to Court Rule 12(a)(3),
15 TracFone is not required to respond to the First Amended Complaint until December 6, 2010.

16 4. This Notice has been filed timely pursuant to 28 U.S.C. § 1446(b).

17 5. The Superior Court of the State of Washington in and for the County of King
18 is located within the Western District of Washington. 28 U.S.C. § 128(b). This Notice of
19 Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

20 6. The Court has jurisdiction over this action pursuant to Section 4 of the Class
21 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d), which grants district courts
22 original jurisdiction over putative class actions with more than 100 class members where the
23 aggregate amount in controversy exceeds \$5 million, and any member of the class of plaintiffs
24 is a citizen of a state different from any defendant. As set forth below, this action satisfies
25 each of the requirements of Section 1332(d)(2) for original jurisdiction under CAFA.

26
DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
§§ 1332, 1441, 1446 AND 1453 - 2

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1 7. **Covered Class Action.** This action meets CAFA's definition of a class action,
 2 which is "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or
 3 similar State statute or rule of judicial procedure." 28 U.S.C. §§ 1332(d)(1)(B), 1453(a) &
 4 (b). Plaintiff brings this action under Washington Court Rules ("CR") 23(a), (b)(1), (b)(2),
 5 (b)(3) and/or (c)(4)(A) – Washington's equivalent of Federal Rule of Civil Procedure 23. *See*
 6 FAC ¶ 29.

7 8. **Class Action Consisting of More than 100 Members.** In her complaint,
 8 Duwors alleges that "there are a minimum of 100 members of the Class" and that "the identity
 9 and exact number of members of the Class is currently unknown but is estimated to be well in
 10 excess of 100." FAC ¶ 32(b). Assuming the truth of the Plaintiff's allegations, the number of
 11 class members exceeds CAFA's requirement of at least 100 persons. 28 U.S.C. §
 12 1332(d)(5)(B). This fact is confirmed by TracFone's records, which indicate that there are
 13 well over 100 Straight Talk customers in Washington. Declaration of Rick Dobrinsky
 14 ("Dobrinsky Decl."), ¶ 3.

15 9. **Diversity.** Plaintiff alleges that she purchased a "TracFone pre-paid cell phone
 16 service gift card" (FAC ¶ 2 (emphasis added)) but the image included in the First Amended
 17 Complaint indicates that she purchased a Straight Talk 30/30 wireless airtime card. *Id.* ¶ 21.
 18 And as noted on the image of the card Plaintiff allegedly purchased, "Straight Talk is a
 19 service of TracFone Wireless Inc." *Id.* Accordingly, the terms "Straight Talk" and
 20 "TracFone" are not interchangeable in the manner Plaintiff suggests. Dobrinsky Decl., ¶ 4.
 21 Clarity requires that the First Amended Complaint be read to refer to Straight Talk wireless
 22 airtime cards throughout.

23 10. Under CAFA, diversity is established pursuant to 28 U.S.C. § 1332(d)(2)(A) if
 24 any plaintiff, named or not, is a "citizen of a State different from any defendant." While the
 25 Plaintiff does not plead her state of citizenship, she claims to be "a consumer who purchased a
 26 [Straight Talk] pre-paid cell phone service gift card at a Wal-Mart store *in Washington State.*"

DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
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1 FAC ¶ 2 (emphasis added). Plaintiff seeks to represent a class of “[a]ll persons who
 2 purchased a [Straight Talk] prepaid mobile card *in Washington State.*” FAC ¶ 29 (emphasis
 3 added). Plaintiff states “over 90% of the putative members of the class are citizens of the
 4 State of Washington.” FAC ¶ 11. Thus, either Plaintiff or a member of the putative class is a
 5 citizen of the State of Washington. By contrast, TracFone is, and was at the time of the filing
 6 of this action, a corporation organized and existing under the laws of Delaware, with its
 7 headquarters and principal place of business in Miami, Florida. FAC ¶ 3. Accordingly, at
 8 least one plaintiff is a citizen of a state (Washington) different from TracFone (Delaware and
 9 Florida (*see* 28 U.S.C. §§ 1332(c), (d) (10)), thus satisfying the diversity requirements of 28
 10 U.S.C. § 1332(d)(2)(A).

11 **11. Amount in Controversy.** Under CAFA, the claims of the individual class
 12 members are aggregated to determine if the amount in controversy exceeds the required “sum
 13 or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2), (d)(6); *see*
 14 also *Lowdermilk v. US Bank Nat'l Ass'n*, 479 F.3d 994, 1004 (9th Cir. 2007). While
 15 TracFone denies the claims alleged in the Complaint and further denies that Plaintiff, or any
 16 putative class member, is entitled to any monetary or injunctive relief, the amount in
 17 controversy here satisfies the jurisdictional threshold, as explained below.

18 **12. Amount in Controversy – Disgorgement.** The Complaint itself is silent as to
 19 the exact amount of damages sought, but given the size of the putative class and the monetary
 20 relief sought, the amount in controversy exceeds \$5 million, exclusive of interest and costs.
 21 This action is a putative class action in which Plaintiff alleges that Wal-Mart and TracFone
 22 sell prepaid wireless access cards that violate Washington’s gift certificate laws (Revised
 23 Code of Washington (“RCW”) 19.240, *et seq.*) as well as the Washington Consumer
 24 Protection Act, RCW 19.86.020, *et seq.* FAC ¶¶ 35-43, 54-61. In Plaintiff’s fourth cause of
 25 action, for unjust enrichment, she alleges that “Wal-Mart and TracFone’s unfair and illegal
 26 actions . . . have enabled Wal-Mart and TracFone to receive money in violation of

DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
 OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
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1 Washington law.” *Id.* ¶ 64. She further alleges that “Wal-Mart and TracFone should be
 2 required to disgorge the money retained as a result of their unjust enrichment.” *Id.* ¶ 65. And
 3 she repeats this allegation in alleging that the putative class is entitled to disgorgement. *Id.* at
 4 11:26-27. Plaintiff also seeks compensatory damages, *treble damages* under Washington law,
 5 and attorneys’ fees and costs. *Id.* at 11:22-12:3.

6 13. Based on the allegations contained in the Complaint, the amount in
 7 controversy with respect to disgorgement *alone* exceeds \$5 million. According to TracFone’s
 8 records, the total revenue from the sale of Straight Talk cards in Washington since June 2009
 9 is over \$40 million. Dobrinsky Decl., ¶ 3. Because Plaintiff seeks disgorgement, this entire
 10 amount is placed in controversy. *See Werwinski v. Ford Motor Co.*, 286 F.3d 661, 667-668
 11 (3d Cir. 2002) (removal proper and jurisdictional amount in controversy satisfied based on
 12 unjust enrichment claim where plaintiff sought disgorgement of illegally obtained profits;
 13 proper measure of disgorgement was entire purchase price of car with allegedly defective
 14 transmission, rather than only the cost to repair defective transmission). Accordingly, while
 15 TracFone contends that neither Plaintiff nor any of the putative class members are entitled to
 16 any damages, the amount placed in controversy by the Complaint clearly exceeds \$5 million
 17 based solely on Plaintiff’s disgorgement claim, and before trebling Plaintiff’s alleged
 18 compensatory damages.

19 14. **Amount in Controversy – Attorneys’ Fees.** Plaintiff also seeks attorneys’
 20 fees under the Washington Consumer Protection Act. FAC ¶ 60 and 12:1-3. Thus, the Court
 21 should also consider her attorneys’ fees request in determining whether the amount in
 22 controversy exceeds \$5 million. *See Lowdermilk* 479 F.3d at 1000 (*citing Gibson*, 261 F.3d at
 23 942-43) (including attorneys’ fees in calculating amount in controversy where there is a
 24 statutory basis for awarding fees). The amount of any such fees in a class action like this
 25 certainly is significant, and likely would run into the millions if this case were to reach trial.

26 * * *

DEFENDANT TRACFONE WIRELESS, INC’S NOTICE
 OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
 §§ 1332, 1441, 1446 AND 1453 - 5

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15. In accordance with 28 U.S.C. § 1446(d), TracFone is serving Plaintiff with a copy of a Notice to Plaintiff of Filing of Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453. A true and correct copy of that Notice to Plaintiff is attached hereto as Exhibit 2 and is incorporated by reference.

16. Pursuant to 28 U.S.C. § 1446(d), TracFone also is filing in the Superior Court of Washington in and for the County of King, and is serving the same upon Plaintiff, a Notice to Superior Court of Filing of Removal of Action Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453. A true and correct copy of that Notice to Superior Court is attached hereto as Exhibit 3 and incorporated by reference.

DATED: November 3, 2010

LANE POWELL PC

By s/Rudy A. Englund
Rudy A. Englund, WSB No. 04123
englundr@lanepowell.com
Mary S. Young, WSB No. 33173
youngm@lanepowell.com
Attorneys for Tracfone Wireless, Inc., a
Delaware corporation

DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
§§ 1332, 1441, 1446 AND 1453 - 6

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SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2010 I caused to be served a copy of the foregoing document on the following person(s) in the manner indicated below at the following address(es):

Derek Linke
linke@newmanlaw.com
Derek A. Newman
derek@newmanlaw.com
Newman & Newman, LLP
505 Fifth Avenue South, Ste. 610
Seattle, WA 98104

Ph: 206-274-2800
Fx: 206-274-2801
Direct for D. Newman: 206-274-2828
Direct for D. Linke: 206-274-2827

- by CM/ECF
- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

Amande Lund

Amanda L. Lund

**DEFENDANT TRACFONE WIRELESS, INC'S NOTICE
OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C.
§§ 1332, 1441, 1446 AND 1453 - 7**

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C O R P O R A T I O N S E R V I C E C O M P A N Y®

Notice of Service of Process

null / ALL
Transmittal Number: 8076505
Date Processed: 10/07/2010

Primary Contact: Richard B. Salzman
Tracfone Wireless, Inc.
9700 NW 112th Ave
Miami, FL 33178-1353

Entity: TracFone Wireless, Inc.
Entity ID Number 2587801

Entity Served: Tracfone Wireless, Inc.

Title of Action: Christina Reeves Duwors vs. Tracfone Wireless, Inc.

Document(s) Type: Summons/Complaint

Nature of Action: Contract

Court: King County Superior Court, Washington

Case Number: 10-2-35173-6 SEA

Jurisdiction Served: Delaware

Date Served on CSC: 10/07/2010

Answer or Appearance Due: 60 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Derek Linke
206-274-2800

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

CHRISTINA REEVES DUWORS, an individual, by herself and on behalf of all others similarly situated,

NO. 10-2-35173-6 SEA

SUMMONS

Plaintiff,

V.

TRACFONE WIRELESS, INC., a Delaware corporation; and WAL-MART STORES, INC., a Delaware corporation;

Defendants.

TO THE DEFENDANT, TRACFONE WIRELESS, INC.:.

A lawsuit has been started against you in the above entitled court by CHRISTINA REEVES DUWORS, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within sixty (60) days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what it asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

SUMMONS - 1

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

1 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
2 demand must be in writing and must be served upon the person signing this summons.
3 Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the
4 court, or the service on you of this summons and complaint will be void.

5 If you wish to seek the advice of an attorney in this matter, you should do so
6 promptly so that your written response, if any, may be served on time.

7 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the
8 State of Washington.

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11 DATED this 6th day of October, 2010.

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NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

By: 

Derek Linke, WSBA No. 38314
Derek A. Newman, WSBA No. 26967

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

CHRISTINA REEVES DUWORS	Plaintiff(s)	NO. 10-2-35173-6 SEA
vs		Order Setting Civil Case Schedule (*ORSCS)
TRACFONE WIRELESS, INC., and WAL-MART STORES, INC.		ASSIGNED JUDGE <u>McDermott</u> 38
	Defendant(s)	FILE DATE: 10/05/2010
		TRIAL DATE: 03/26/2012

EARLY MEDIATION PILOT

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

Print Name

Sign Name

I. NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] – especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$200 must be paid when any answer that includes additional claims is filed in an existing case.

KCLCR 4.2(a)(2)

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this **Schedule** are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an Order of Dismissal, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a Statement must pay a \$220 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

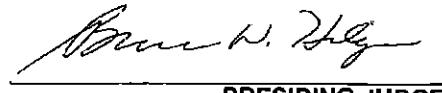
II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Tue 10/05/2010	*
DEADLINE to file Early Mediation Plan [See Pilot Procedures attached]	Wed 02/02/2011	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	Tue 03/15/2011	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLCR 4.2(a) and Notices on Page 2].	Tue 03/15/2011	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLCR 82(e)]	Tue 03/29/2011	
DEADLINE for Completing Early Mediation [See Pilot Procedures attached]	Mon 10/10/2011	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLCR 26(b)].	Mon 10/24/2011	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLCR 26(b)].	Mon 12/05/2011	
DEADLINE for Jury Demand [See KCLCR 38(b)(2)].	Mon 12/19/2011	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLCR 40(d)(2)].	Mon 12/19/2011	*
DEADLINE for Discovery Cutoff [See KCLCR 37(g)].	Mon 02/06/2012	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLCR 4(j)].	Mon 03/05/2012	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLCR 16].	Mon 03/05/2012	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLCR 56; CR 56].	Mon 03/12/2012	
Joint Statement of Evidence [See KCLCR (4)(k)].	Mon 03/19/2012	*
DEADLINE for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Mon 03/19/2012	*
Trial Date [See KCLCR 40].	Mon 03/26/2012	

III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this Order Setting Civil Case Schedule and attachment on all other parties.

This case schedule is issued pursuant to General Administrative Order of the court, case # 10-2-12050-0 SEA signed on August 13, 2010, which establishes and regulates the Early Mediation Pilot Project, which impacts cases filed September 2010 through November 2010. Pursuant to the procedures adopted for the Pilot Project, the civil case schedule is modified to add a mediation plan due date and a completion date for mediation, as well as to delete the normal deadline for engaging in Alternative Dispute Resolution.

DATED: 10/05/2010


PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

CASE SCHEDULE AND REQUIREMENTS

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report:

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

C. Trial: Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

Emergency Motions: Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

B. Original Documents/Working Copies/ Filing of Documents

All original documents must be filed with the Clerk's Office. Please see information on the Clerk's Office website at www.kingcounty.gov/courts/clerk regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at www.kingcounty.gov/courts/clerk.

Service of documents. E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at www.kingcounty.gov/courts/clerk regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

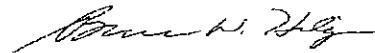
Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

C. Form

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

PROCEDURES FOR THE EARLY MEDIATION PILOT PROJECT

(a) Early Mediation. All civil cases, except those identified below, are required to submit to Early Mediation.

- 1) Family Law;
- 2) Guardianship and Probate, including matters governed by the Trusts and Estate Dispute Resolution Act ("TEDRA");
- 3) Cases submitted to Mandatory Arbitration under the Local Rules for Mandatory Arbitration;
- 4) Trials de novo pursuant to MAR 7.1;
- 5) Adoption;
- 6) Receivership;
- 7) Juvenile Dependency;
- 8) Condemnation;
- 9) Administrative Law Review;
- 10) Land Use Appeal;
- 11) Appeals from Courts of Limited jurisdiction; and
- 12) Any case not governed by the Civil Case Schedule as provided in LCR 4(b).

Any party may seek to be exempted from mandatory early mediation by motion, upon establishing extraordinary circumstances and no alternative means of preventing a substantial injustice. If the request for exemption is denied, the parties shall file their Mediation Plan within 30 days from the date of such denial.

(b) Early Mediation Plan. Within 120 days from the filing of the Complaint, the parties shall jointly file a Mediation Plan. The Mediation Plan shall contain the following information: (1) an affirmation that the parties have met and conferred regarding mediation; (2) the date upon which the meet and confer occurred; (3) the mediator agreed upon and selected by the parties; (4) the date(s) upon which the mediation shall take place; (5) the identification of any limited discovery that shall take place prior to the mediation; (6) the identification of issues to be addressed at the mediation, including possible procedures to narrow the claims at issue and discovery in the lawsuit; and (7) a description of written submissions, if any, to be made by the parties to the mediator and the date upon which such submissions shall be made.

(c) Date of Mediation. The mediation must be conducted no later than 120 days before the discovery cutoff date specified in the Order setting the case schedule.

(d) Mediation Attendees. The parties shall personally attend the mediation, unless excused in advance by the mediator. Each party may also have present any other persons whom they believe will be helpful to achieve settlement. Parties whose defense is provided by a liability insurance company need not personally attend the mediation, but a representative of the insurer shall attend in person with sufficient authority to bind the insurer to a settlement.

(e) Mediation Reports.

(1) Notice of Settlement. If a settlement is reached at mediation, the parties shall file a Notice of Settlement in accordance with LCR 41(e).

(2) Mediation Confirmation Report. If a complete settlement is not reached, upon completion of the mediation, but no later than ten (10) days after the mediation, the parties shall submit a Mediation Confirmation Report to the court indicating: (A) the date of the mediation; (B) the name of the mediator; (C) the names and titles of all persons present; (D) a statement that the mediation did not result in a complete settlement; and (E) the identification of the settlement of any individual claims or issues. If the parties have determined that further mediation is warranted, the parties shall inform the court of the date and time for the next scheduled mediation and shall identify what, if any, limited discovery shall take place prior to the mediation. Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

(f) Sanctions for Failure to File Plan. If a party willfully fails to file an Early Mediation Plan or willfully fails to participate in the mediation, sanctions may be imposed by the court, including dismissal of claims asserted by the party, default judgment, and/or attorney's fees and costs.

Clerk's Office ALERT

Announcing the Early Mediation Pilot Project

Recognizing the benefits of early settlement, the trustees of the King County Bar Association, based on work of the KCBA's Judiciary and Courts Committee, recommended that King County Superior Court adopt an early mediation requirement for most civil cases. The King County Superior Court has agreed to a pilot project to evaluate the benefits of early mediation.

The pilot project will begin September 2010. Randomly selected civil cases that would generally receive an 18-month civil case schedule will instead receive a modified case schedule. The pilot project random selection process will continue approximately 2 months in order to capture 1,800 cases. This represents 10% of the cases that normally receive the 18 month civil case schedule on an annual basis, which is a statistically significant sample.

The pilot project case schedule is set forth below. In essence, the pilot project case schedule will add two deadlines: 1) filing a mediation plan 17 weeks after filing; and, 2) completing mediation 21 weeks before trial. These new deadlines occur before the discovery cut-off deadline.

The KCBA and the Court are hopeful that the proposed early mediation rule will encourage early settlement and reduce the number of cases that settle close to the date of trial, thus providing cost savings to the parties and allowing the Court to focus its resources on the cases that will actually be tried.

See the Pilot Project Procedures, the administrative general order and the model case schedule on the Clerk's Website at <http://www.kingcounty.gov/courts/Clerk.aspx>

Sign up to receive Clerk's Office Alerts automatically by e-mail. To receive future alerts automatically compose an e-mail message and send e-mail as follows:

To subscribe, click on the link below and send the email.

To: listserv@lists.kingcounty.gov

Type in the body of the email. Subscribe clerks-alert-mailing-list

If added to the mailing list successfully you will receive a confirmation notice.

FOR MORE INFORMATION ON THIS TOPIC CONTACT:

Barb Miner 296-2910

ISSUED BY: Barbara Miner, Director and Superior Court Clerk

ISSUE DATE: August 24, 2010

ISSUE NO: 10-006

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

9 CHRISTINA REEVES DUWORS, an
10 individual, by herself and on behalf of all
others similarly situated,

11 Plaintiff,

12 v.

13 TRACFONE WIRELESS, INC., a Delaware
14 corporation; and WAL-MART STORES,
INC., a Delaware corporation;

15 Defendants.

NO. 10-2-35173-6 SEA

PLAINTIFF'S FIRST SET OF
INTERROGATORIES

17 Plaintiff Christina Reeves Duwors hereby propounds the following interrogatories
18 to Defendant TracFone Wireless, Inc. pursuant to CR 26 and 33. The interrogatories
19 should be answered in full and the original returned within forty (40) days of the date of
20 service of this request, which accompanies the service of the summons and complaint. The
21 answers should be provided to the offices of Newman & Newman, Attorneys At Law,
22 LLP, 505 5th Ave. S., Suite 610, Seattle, Washington 98104. You should respond to each
23 discovery question in accordance with the instructions and definitions set forth below.

24 **I. INSTRUCTIONS**

25 1. Pursuant to CR 26 and 33, You are to answer each of these discovery
26 requests separately and fully, and under oath.

27 2. For each answer, identify each person who provided any of the information
28 or any documents set forth in the answer and the information or documents that the person

PLAINTIFF'S FIRST SET OF
INTERROGATORIES - 1

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

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1 provided.

2 3. In answering these discovery requests, unless otherwise specified, You are to
3 furnish all information known to You at the time of answering, regardless of whether this
4 information is possessed by You or Your employees, agents, representatives, affiliated
5 corporations, investigators, or by Your attorneys or their employees, agents,
6 representatives or investigators.

7 4. These discovery requests shall, to the fullest extent permitted by law, be
8 deemed continuing, so as to require You, without further request from Plaintiff, to provide
9 supplemental answers within fifteen (15) days of acquiring any additional information,
10 knowledge or belief pertaining to the subject matter of any interrogatory.

11 5. If You cannot answer any of the following discovery after exercising due
12 diligence to secure the full information to do so, so state and answer to the extent possible,
13 specifying Your inability to respond in full, stating whatever information or knowledge
14 You have concerning the unanswered portion, and detailing what You did in attempting to
15 secure the unknown information. If You do know the name of a person or entity that may
16 have such information, the name, address, telephone number, and the nature of the
17 information known by such person or entity shall be disclosed in Your answer.

18 6. If You withhold under a claim of privilege any information or document
19 called for by any discovery request, state the following:

20 a. the basis for withholding the information;
21 b. the identity of all persons who possess the information;
22 c. the date and place of, and the identity of, all persons involved in any
23 communications that bear on the information called for by the
24 discovery request; and
25 d. in general, the substance of the document.

26 7. For each and every answer to these discovery requests, state all the facts
27 relied upon, and provide the evidentiary basis (identifying documents, witnesses, and other
28 sources) for each fact identified.

1 8. A question that seeks information contained in, information about, or
2 identification of any documents may be answered by providing a copy of such document
3 for inspection without a request for production.

4 9. Provide all responsive information for the entire time period specified by an
5 interrogatory. If certain information responsive to a discovery request applies only to part
6 of the period of time specified by the interrogatory, state the dates between which such
7 discovery request applies.

8 10. The singular form of a noun or pronoun shall be considered to include within
9 its meaning the plural form of the noun or pronoun so used and vice versa; the use of the
10 masculine form of a pronoun shall be considered to include within its meaning the
11 feminine form of the pronoun so used and vice versa; and, the use of any tense of any verb
12 shall be considered to include within its meaning all other tenses of the verb.

13 11. Whenever it is necessary to bring within the scope of these interrogatories
14 information that otherwise might be construed to be outside their scope, "any" should be
15 understood to include and encompass "all"; "all" should be understood to include and
16 encompass "any"; "or" should be understood to include and encompass "and"; and, "and"
17 should be understood to include and encompass "or."

18 12. The use of the words "include(s)" and "including" should be construed to
19 mean without limitation.

20 13. The terms "present" or "presently" refer to the date of service of these
21 interrogatories and shall continue through resolution of this litigation.

14. The term "discovery request" refers to these interrogatories.

15. The term "answers" refers to Your answers and/or responses to these interrogatories.

25 16. Plaintiff will move to preclude You from presenting evidence regarding
26 responsive matters You have failed to set forth in Your answers.

II. DEFINITIONS

28 Unless the context clearly indicates otherwise, the following words and phrases are

1 defined and used herein as follows:

2 1. The term "communications" includes any and all phone conversations,
3 emails, correspondence, meetings, conferences, instant messaging, text messaging,
4 memoranda, or any record of oral communication.

5 2. The term "Consumer" includes any individual or entity who purchases Your
6 Products or services, any individual or entity who possesses Your Products or services, or
7 individual or entity to whom Your Products or services are Issued.

8 3. The term "Identify," when used in connection with a person, means to state
9 the person's full current name, to state the person's full current residence address, to state
10 the person's full current business address, to state the person's telephone numbers, and to
11 identify Your Products purchased by the person.

12 4. The term "Identify" when used in connection with a Document, means to
13 state the type of Document (e.g., letter, memorandum, note, email, spreadsheet, etc.), date,
14 author, addressee, title, serial or file number, its present location, the name and address of
15 its custodian, and the substance of the contents. If a Document has been destroyed, state
16 when and where it was destroyed, Identify the person who destroyed it, and the person or
17 persons who directed the destruction.

18 5. The term "Describe," when used in connection with an act or event, means to
19 state the date of the act or event, to identify each individual participating in or witnessing
20 the act or event, to identify all documents relating to the act or event, and to describe with
21 particularity the sequence of occurrences which constituted the act or event.

22 6. The term "Document" has the full extent of its meaning as provided in CR
23 26 and 34 and includes the original or a copy of the original and any nonidentical copy,
24 regardless of original location, of any recorded, written, printed, typed or other graphic
25 material of any kind, variety, type or character including, by way of example but not
26 limited to, the following: books; records; contracts; agreements; invoices; orders; bills;
27 certificates; bills of sale; bills of lading; correspondence; trip reports; spreadsheets;
28 databases; certificates of title; financing statements; instruments; expense accounts;

1 canceled checks; bank statements; bank books; receipts; disbursement journals; tax returns;
 2 financial statements; check stubs; promissory notes; resumes; address books; appointment
 3 books; telephone logs; worksheets; pictures; income statements; profit and loss statements;
 4 balance statements; deposit slips; credit card receipts; records or notations of telephone or
 5 personal conversations; conferences; intra office communications; interoffice
 6 communications; postcards; letters; telexes; partnership agreements; articles of
 7 incorporation; mailing lists; catalog price lists; sound, tape and video records; memoranda
 8 (including written memoranda of telephone conversation, other conversations, discussions,
 9 agreements, acts and activities); minutes, manuals, diaries; calendar or deskpads;
 10 scrapbooks; notebooks; correspondence; meetings; instant messaging; text messaging; any
 11 record of oral communications; bulletins; circulars; polices; forms; pamphlets; notices;
 12 statements; journals; letters; telegrams; reports; photostats; microfilm; microfiche; maps;
 13 deposition transcripts; email messages; drawings; blueprints; photographs; negatives; and
 14 any other data, information, or statistics contained within any data storage modules, tapes,
 15 discs or any other memory device (including on any computer) or any other information
 16 retrievable on storage systems, including computer-generated reports and printouts. When
 17 identifying a document, state the type of document (e.g., letter, memorandum, note, email,
 18 spreadsheet, etc.), date, author, addressee, title, serial or file number, its present location,
 19 the name and address of its custodian, and the substance of the contents. If a document has
 20 been destroyed, state when and where it was destroyed, identify the person who destroyed
 21 it, and the person or persons who directed the destruction.

22 7. The term "Issue" means market, advertise, manufacture, distribute, sell,
 23 license to sell, or otherwise provide.

24 8. The term "person" includes individuals and entities. When identifying a
 25 person or non-corporate entity, including but not limited to any partnership, joint venture,
 26 sole proprietorship or any other unincorporated association, state the person or entity's full
 27 name, last known address, and last known office and home telephone numbers. Once a
 28 person or entity has been identified in accordance with this paragraph, only the name of

1 that person or entity need be listed in answer to subsequent answers requesting the
2 identification of that person or entity. When identifying a corporation, limited liability
3 company, or other business entity (each, an “entity”), state the entity’s name, last known
4 address, last known telephone number, state of organization, date of formation, date of
5 dissolution (if applicable), and all names under which the entity has done business. Once
6 an entity has been identified in accordance with this paragraph, only the name of that entity
7 need be listed in answer to subsequent answers identifying that entity.

8 9. The phrase "relating to" means consisting of, summarizing, describing,
9 reflecting, or referring to in any way.

10 10. The term "Statement" includes any statement made by You, including but
11 not limited to any electronic mail messages (e-mails), paper documents, press releases and
12 statements made via the Internet.

13 11. The terms "You" and "Your" means TracFone, its managers, officers,
14 directors, affiliates, subsidiaries, corporate parents and any predecessors or successors in
15 interest.

16 12. The term "Your Products" means any good or service Issued by You, on
17 Your behalf or in association in any way with Your brands, including but not limited to
18 TracFone, NET10, Safelink Wireless, Straight Talk, and Senior Value Cellphone.

19 13. The term "Phone Card" means any pre-paid phone card, usage card, gift
20 certificate, gift card, service card, and/or airtime card Issued by You, on Your behalf or in
21 association in any way with Your brands.

III. INTERROGATORIES

INTERROGATORY NO. 1: Describe all transactions involving the Issuance of Your Products in Washington.

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ANSWER:

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4 **INTERROGATORY NO. 2:** If You deny any request for admission in Plaintiff's
5 First Set of Requests for Admission, state all facts and Identify all documents that
6 support Your denial.

7 **ANSWER:**

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12 DATED this 6th day of October 2010.

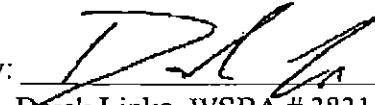
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**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

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By: 

Derek Linke, WSBA # 38314

Derek A. Newman, WSBA # 26967
Attorneys for Plaintiff

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PLAINTIFF'S FIRST SET OF
INTERROGATORIES - 7

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

9 CHRISTINA REEVES DUWORS, an individual,
10 by herself and on behalf of all others similarly
situated,

11 Plaintiff,

12 v.

13 TRACFONE WIRELESS, INC., a Delaware
14 corporation; and WAL-MART STORES, INC., a
Delaware corporation;

15 Defendants.

NO. 10-2-35173-6 SEA

PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION TO
DEFENDANT TRACFONE
WIRELESS, INC.

17 Pursuant to CR 26 and 36, Plaintiff Christina Reeves Duwors request that
18 Defendant TracFone Wireless, Inc. answer by admitting the truthfulness of the matters set
19 forth below, within forty (40) days of service of summons and complaint. The answers
20 should be provided to the offices of Newman & Newman, Attorneys At Law, LLP, 505 5th
21 Ave. S., Suite 610, Seattle, Washington 98104.

22 **I INSTRUCTIONS**

23 1. Pursuant to CR 26 and 36, You are to answer each of these discovery
24 requests separately and fully, and under oath.

25 2. These discovery requests shall, to the fullest extent permitted by law, be
26 deemed continuing, so as to require You, without further request from Plaintiff, to provide
27 supplemental answers within fifteen (15) days of acquiring any additional information,
28 knowledge or belief pertaining to the subject matter of any request for admission.

PLAINTIFF'S FIRST SET
OF REQUESTS FOR ADMISSION - 1

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

1 3. The singular form of a noun or pronoun shall be considered to include within
2 its meaning the plural form of the noun or pronoun so used and vice versa; the use of the
3 masculine form of a pronoun shall be considered to include within its meaning the
4 feminine form of the pronoun so used and vice versa; and, the use of any tense of any verb
5 shall be considered to include within its meaning all other tenses of the verb.

6 4. Whenever it is necessary to bring within the scope of these requests for
7 admission information that otherwise might be construed to be outside their scope, "any"
8 should be understood to include and encompass "all"; "all" should be understood to
9 include and encompass "any"; "or" should be understood to include and encompass "and";
10 and, "and" should be understood to include and encompass "or."

11 5. The use of the words "include(s)" and "including" should be construed to
12 mean without limitation.

13 6. The terms "present" or "presently" refer to the date of service of these
14 requests for admission and shall continue through resolution of this litigation.

15 7. The term "discovery request" refers to these requests for admission.

16 8. The term "answers" refers to Your answers and/or responses to these
17 requests for admission.

18 9. Plaintiff will move to preclude You from presenting evidence regarding
19 responsive matters You have failed to set forth in Your answers.

20 II. DEFINITIONS

21 Unless the context clearly indicates otherwise, the following words and phrases are
22 defined and used herein as follows:

23 1. The term "communications" includes any and all phone conversations,
24 emails, correspondence, meetings, conferences, instant messaging, text messaging,
25 memoranda, or any record of oral communication.

26 2. The term "Consumer" includes any individual or entity who purchases Your
27 Products or services, any individual or entity who possesses Your Products or services, or
28 individual or entity to whom Your Products or services are Issued.

1 3. The term "Identify," when used in connection with a person, means to state
 2 the person's full current name, to state the person's full current residence address, to state
 3 the person's full current business address, to state the person's telephone numbers, and to
 4 identify Your Products purchased by the person.

5 4. The term "Identify" when used in connection with a Document, means to
 6 state the type of Document (e.g., letter, memorandum, note, email, spreadsheet, etc.), date,
 7 author, addressee, title, serial or file number, its present location, the name and address of
 8 its custodian, and the substance of the contents. If a Document has been destroyed, state
 9 when and where it was destroyed, Identify the person who destroyed it, and the person or
 10 persons who directed the destruction.

11 5. The term "Describe," when used in connection with an act or event, means to
 12 state the date of the act or event, to identify each individual participating in or witnessing
 13 the act or event, to identify all documents relating to the act or event, and to describe with
 14 particularity the sequence of occurrences which constituted the act or event.

15 6. The term "Document" has the full extent of its meaning as provided in CR
 16 26 and 34 and includes the original or a copy of the original and any nonidentical copy,
 17 regardless of original location, of any recorded, written, printed, typed or other graphic
 18 material of any kind, variety, type or character including, by way of example but not
 19 limited to, the following: books; records; contracts; agreements; invoices; orders; bills;
 20 certificates; bills of sale; bills of lading; correspondence; trip reports; spreadsheets;
 21 databases; certificates of title; financing statements; instruments; expense accounts;
 22 canceled checks; bank statements; bank books; receipts; disbursement journals; tax returns;
 23 financial statements; check stubs; promissory notes; resumes; address books; appointment
 24 books; telephone logs; worksheets; pictures; income statements; profit and loss statements;
 25 balance statements; deposit slips; credit card receipts; records or notations of telephone or
 26 personal conversations; conferences; intra office communications; interoffice
 27 communications; postcards; letters; telexes; partnership agreements; articles of
 28 incorporation; mailing lists; catalog price lists; sound, tape and video records; memoranda

1 (including written memoranda of telephone conversation, other conversations, discussions,
 2 agreements, acts and activities); minutes, manuals, diaries; calendar or deskpads;
 3 scrapbooks; notebooks; correspondence; meetings; instant messaging; text messaging; any
 4 record of oral communications; bulletins; circulars; policies; forms; pamphlets; notices;
 5 statements; journals; letters; telegrams; reports; photostats; microfilm; microfiche; maps;
 6 deposition transcripts; email messages; drawings; blueprints; photographs; negatives; and
 7 any other data, information, or statistics contained within any data storage modules, tapes,
 8 discs or any other memory device (including on any computer) or any other information
 9 retrievable on storage systems, including computer-generated reports and printouts. When
 10 identifying a document, state the type of document (e.g., letter, memorandum, note, email,
 11 spreadsheet, etc.), date, author, addressee, title, serial or file number, its present location,
 12 the name and address of its custodian, and the substance of the contents. If a document has
 13 been destroyed, state when and where it was destroyed, identify the person who destroyed
 14 it, and the person or persons who directed the destruction.

15 7. The term "Issue" means market, advertise, manufacture, distribute, sell,
 16 license to sell, or otherwise provide.

17 8. The term "person" includes individuals and entities. When identifying a
 18 person or non-corporate entity, including but not limited to any partnership, joint venture,
 19 sole proprietorship or any other unincorporated association, state the person or entity's full
 20 name, last known address, and last known office and home telephone numbers. Once a
 21 person or entity has been identified in accordance with this paragraph, only the name of
 22 that person or entity need be listed in answer to subsequent answers requesting the
 23 identification of that person or entity. When identifying a corporation, limited liability
 24 company, or other business entity (each, an "entity"), state the entity's name, last known
 25 address, last known telephone number, state of organization, date of formation, date of
 26 dissolution (if applicable), and all names under which the entity has done business. Once
 27 an entity has been identified in accordance with this paragraph, only the name of that entity
 28 need be listed in answer to subsequent answers identifying that entity.

9. The phrase "relating to" means consisting of, summarizing, describing, reflecting, or referring to in any way.

10. The term "Statement" includes any statement made by You, including but not limited to any electronic mail messages (e-mails), paper documents, press releases and statements made via the Internet.

11. The terms "You" and "Your" means TracFone, its managers, officers, directors, affiliates, subsidiaries, corporate parents and any predecessors or successors in interest.

9 12. The term "Your Products" means any good or service Issued by You, on
10 Your behalf or in association in any way with Your brands, including but not limited to
11 TracFone, NET10, Safelink Wireless, Straight Talk, and Senior Value Cellphone.

12 13. The term "Phone Card" means any pre-paid phone card, usage card, gift
13 certificate, gift card, service card, and/or airtime card Issued by You, on Your behalf or in
14 association in any way with Your brands.

14. The term "Wal-Mart" means Defendant Wal-Mart Stores, Inc., its corporate
15 parents, subsidiaries, affiliates, predecessors and successors in interest and their officers,
16 directors and employees.
17

III. REQUESTS FOR ADMISSION

19 REQUEST FOR ADMISSION NO. 1: Admit that You Issue Phone Cards in
20 association with the brand Straight Talk.

RESPONSE:

23 REQUEST FOR ADMISSION NO. 2: Admit that a Phone Card may be used to
24 obtain service with a Straight Talk brand phone.

RESPONSE:

1 REQUEST FOR ADMISSION NO. 3: Admit that a Phone Card is an instrument
2 evidencing a promise that Your Products will be provided for the value or service shown
3 on the face of the Phone Card.

4 RESPONSE:

5

6 REQUEST FOR ADMISSION NO. 4: Admit that a Phone Card is a card, a stored
7 value card, or other physical medium, containing stored value primarily intended to be
8 exchanged for Your Products.

9 RESPONSE:

10

11 REQUEST FOR ADMISSION NO. 5: Admit that the \$30/30 Service Day Plan
12 Phone Card Issued under the Straight Talk brand decreases in value as the Consumer uses
13 the minutes and/or text messages and/or mobile web access.

14 RESPONSE:

15

16 REQUEST FOR ADMISSION NO. 6: Admit that a Phone Card for the \$30/30
17 Service Day Plan Issued under the Straight Talk brand provides for a one year expiration
18 date from the date of purchase.

19 RESPONSE:

20

21 REQUEST FOR ADMISSION NO. 7: Admit that You reserve the right to charge
22 additional fees, charges and/ or surcharges to recover the cost of complying with
23 regulations and E911 laws associated with your Phone Cards.

24 RESPONSE:

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1 REQUEST FOR ADMISSION NO. 8: Admit that the value or credit on a Phone
2 Card is forfeited if not used within a period of time.

3 RESPONSE:

4
5 REQUEST FOR ADMISSION NO. 9: Admit that in order to maintain active
6 service, a Phone Card must be periodically refilled.

7 RESPONSE:

8
9 REQUEST FOR ADMISSION NO. 10: Admit that You do not provide Consumers
10 with notice of the arbitration clause contained within the terms and conditions of service
11 displayed on Your websites at <<<http://straighttalk.com>>> and <<<http://tracfone.com>>> at
12 the time a Consumer purchases a Phone Card.

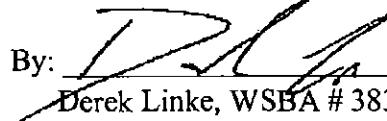
13 RESPONSE:

14
15 REQUEST FOR ADMISSION NO. 11: Admit that Phone Cards expire if not
16 activated within some time period after purchase.

17 RESPONSE:

18
19
20 DATED this 6th day of October 2010.

21
22 NEWMAN & NEWMAN,
23 ATTORNEYS AT LAW, LLP

24 By: 

25 Derek Linke, WSBA # 38314

26 Derek A. Newman, WSBA # 26967

27 Attorneys for Plaintiff

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

9

10

CHRISTINA REEVES DUWORS, an individual,
by herself and on behalf of all others similarly
situated,

11

Plaintiff,

12

v.

13

14

TRACFONE WIRELESS, INC., a Delaware
corporation; and WAL-MART STORES, INC., a
Delaware corporation;

15

Defendants.

16

NO. 10-2-35173-6 SEA

PLAINTIFF'S FIRST SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANT TRACFONE
WIRELESS, INC.

17

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Plaintiff Christina Reeves Duwors hereby propounds the following requests for production to Defendant TracFone Wireless, Inc. pursuant to CR 26 and 34. The requests for production should be responded to in full and the original returned to this office within forty (40) days of the date of service of this request, which accompanies the service of the summons and complaint. The responses should be provided to the offices of Newman & Newman, Attorneys At Law, LLP, 505 5th Ave. S., Suite 610, Seattle, Washington 98104. You should respond to each discovery question in accordance with the instructions and definitions set forth below.

25

I. INSTRUCTIONS

26

27

1. Pursuant to CR 26 and 34, You are to respond to each of these discovery requests separately and fully, and under oath.

28

2. For each response, identify each person who provided any of the information

1 or any documents set forth in the response and the information or documents that the
2 person provided.

3 3. In responding these discovery requests, unless otherwise specified, You are
4 to furnish all information known to You at the time of responding, regardless of whether
5 this information is possessed by You or Your employees, agents, representatives, affiliated
6 corporations, investigators, or by Your attorneys or their employees, agents,
7 representatives or investigators.

8 4. These discovery requests shall, to the fullest extent permitted by law, be
9 deemed continuing, so as to require You, without further request from Plaintiff, to provide
10 supplemental responses within fifteen (15) days of acquiring any additional information,
11 knowledge or belief pertaining to the subject matter of any request for production.

12 5. If You cannot respond to any of the following discovery after exercising due
13 diligence to secure the full information to do so, so state and respond to the extent possible,
14 specifying Your inability to respond in full, stating whatever information or knowledge
15 You have concerning the unanswered portion, and detailing what You did in attempting to
16 secure the unknown information. If You do know the name of a person or entity that may
17 have such information, the name, address, telephone number, and the nature of the
18 information known by such person or entity shall be disclosed in Your response.

19 6. If You withhold under a claim of privilege any information or document
20 called for by any discovery request, state the following:

- 21 a. the basis for withholding the information;
- 22 b. the identity of all persons who possess the information;
- 23 c. the date and place of, and the identity of, all persons involved in any
24 communications that bear on the information called for by the
25 discovery request; and
- 26 d. in general, the substance of the document.

27 7. For each and every response to these discovery requests, state all the facts
28 relied upon, and provide the evidentiary basis (identifying documents, witnesses, and other

1 sources) for each fact identified.

2 8. A question that seeks information contained in, information about, or
3 identification of any documents may be responded to by providing a copy of such
4 document for inspection without a request for production.

5 9. Provide all responsive information for the entire time period specified by a
6 request for production. If certain information responsive to a discovery request applies
7 only to part of the period of time specified by the request for production, state the dates
8 between which such discovery request applies.

9 10. The singular form of a noun or pronoun shall be considered to include within
10 its meaning the plural form of the noun or pronoun so used and vice versa; the use of the
11 masculine form of a pronoun shall be considered to include within its meaning the
12 feminine form of the pronoun so used and vice versa; and, the use of any tense of any verb
13 shall be considered to include within its meaning all other tenses of the verb.

14 11. Whenever it is necessary to bring within the scope of this request for
15 production information that otherwise might be construed to be outside their scope, "any"
16 should be understood to include and encompass "all"; "all" should be understood to
17 include and encompass "any"; "or" should be understood to include and encompass "and";
18 and, "and" should be understood to include and encompass "or."

19 12. The use of the words "include(s)" and "including" should be construed to
20 mean without limitation.

21 13. The terms "present" or "presently" refer to the date of service of this
22 discovery request and shall continue through resolution of this litigation.

23 14. The term "discovery request" refers to this request for production.

24 15. The term "responses" refers to Your responses and/or answers to this request
25 for production.

26 16. Plaintiff will move to preclude You from presenting evidence regarding
27 responsive matters You have failed to set forth in Your response.

28

II. DEFINITIONS

Unless the context clearly indicates otherwise, the following words and phrases are defined and used herein as follows:

1. The term "communications" includes any and all phone conversations, emails, correspondence, meetings, conferences, instant messaging, text messaging, memoranda, or any record of oral communication.

2. The term "Consumer" includes any individual or entity who purchases Your Products or services, any individual or entity who possesses Your Products or services, or individual or entity to whom Your Products or services are Issued.

10 3. The term "Identify," when used in connection with a person, means to state
11 the person's full current name, to state the person's full current residence address, to state
12 the person's full current business address, to state the person's telephone numbers, and to
13 identify Your Products purchased by the person.

14 4. The term "Identify" when used in connection with a Document, means to
15 state the type of Document (e.g., letter, memorandum, note, email, spreadsheet, etc.), date,
16 author, addressee, title, serial or file number, its present location, the name and address of
17 its custodian, and the substance of the contents. If a Document has been destroyed, state
18 when and where it was destroyed, Identify the person who destroyed it, and the person or
19 persons who directed the destruction.

20 5. The term "Describe," when used in connection with an act or event, means to
21 state the date of the act or event, to identify each individual participating in or witnessing
22 the act or event, to identify all documents relating to the act or event, and to describe with
23 particularity the sequence of occurrences which constituted the act or event.

24 6. The term "Document" has the full extent of its meaning as provided in CR
25 26 and 34 and includes the original or a copy of the original and any nonidentical copy,
26 regardless of original location, of any recorded, written, printed, typed or other graphic
27 material of any kind, variety, type or character including, by way of example but not
28 limited to, the following: books; records; contracts; agreements; invoices; orders; bills;

1 certificates; bills of sale; bills of lading; correspondence; trip reports; spreadsheets;
 2 databases; certificates of title; financing statements; instruments; expense accounts;
 3 canceled checks; bank statements; bank books; receipts; disbursement journals; tax returns;
 4 financial statements; check stubs; promissory notes; resumes; address books; appointment
 5 books; telephone logs; worksheets; pictures; income statements; profit and loss statements;
 6 balance statements; deposit slips; credit card receipts; records or notations of telephone or
 7 personal conversations; conferences; intra office communications; interoffice
 8 communications; postcards; letters; telexes; partnership agreements; articles of
 9 incorporation; mailing lists; catalog price lists; sound, tape and video records; memoranda
 10 (including written memoranda of telephone conversation, other conversations, discussions,
 11 agreements, acts and activities); minutes, manuals, diaries; calendar or deskpads;
 12 scrapbooks; notebooks; correspondence; meetings; instant messaging; text messaging; any
 13 record of oral communications; bulletins; circulars; polices; forms; pamphlets; notices;
 14 statements; journals; letters; telegrams; reports; photostats; microfilm; microfiche; maps;
 15 deposition transcripts; email messages; drawings; blueprints; photographs; negatives; and
 16 any other data, information, or statistics contained within any data storage modules, tapes,
 17 discs or any other memory device (including on any computer) or any other information
 18 retrievable on storage systems, including computer-generated reports and printouts. When
 19 identifying a document, state the type of document (e.g., letter, memorandum, note, email,
 20 spreadsheet, etc.), date, author, addressee, title, serial or file number, its present location,
 21 the name and address of its custodian, and the substance of the contents. If a document has
 22 been destroyed, state when and where it was destroyed, identify the person who destroyed
 23 it, and the person or persons who directed the destruction.

24 7. The term "Issue" means market, advertise, manufacture, distribute, sell,
 25 license to sell, or otherwise provide.

26 8. The term "person" includes individuals and entities. When identifying a
 27 person or non-corporate entity, including but not limited to any partnership, joint venture,
 28 sole proprietorship or any other unincorporated association, state the person or entity's full

1 name, last known address, and last known office and home telephone numbers. Once a
2 person or entity has been identified in accordance with this paragraph, only the name of
3 that person or entity need be listed in answer to subsequent answers requesting the
4 identification of that person or entity. When identifying a corporation, limited liability
5 company, or other business entity (each, an "entity"), state the entity's name, last known
6 address, last known telephone number, state of organization, date of formation, date of
7 dissolution (if applicable), and all names under which the entity has done business. Once
8 an entity has been identified in accordance with this paragraph, only the name of that entity
9 need be listed in answer to subsequent answers identifying that entity.

10 9. The phrase "relating to" means consisting of, summarizing, describing,
11 reflecting, or referring to in any way.

12 10. The term "Statement" includes any statement made by You, including but
13 not limited to any electronic mail messages (e-mails), paper documents, press releases and
14 statements made via the Internet.

15 11. The terms "You" and "Your" means TracFone, its managers, officers,
16 directors, affiliates, subsidiaries, corporate parents and any predecessors or successors in
17 interest.

18 12. The term "Your Products" means any good or service Issued by You, on
19 Your behalf or in association in any way with Your brands, including but not limited to
20 TracFone, NET10, Safelink Wireless, Straight Talk, and Senior Value Cellphone.

21 13. The term "Phone Card" means any pre-paid phone card, usage card, gift
22 certificate, gift card, service card, and/or airtime card Issued by You, on Your behalf or in
23 association in any way with Your brands.

24 14. The term "Wal-Mart" means Defendant Wal-Mart Stores, Inc., its corporate
25 parents, subsidiaries, affiliates, predecessors and successors in interest and their officers,
26 directors and employees.

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III. REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce all documents relating to the unused value or credit associated with Phone Cards Issued in Washington.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce all documents relating to the
Issuance of Phone Cards in Washington.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce all Communications between You and Wal-Mart relating in any way to Your Products.

RESPONSE:

24 **REQUEST FOR PRODUCTION NO. 4:** Produce all documents relating to the
25 Issuance of Phone Cards in Washington through online retail sites.

RESPONSE:

1 **REQUEST FOR PRODUCTION NO. 5:** Produce all documents relating to the
2 accounting for or of the amount of value or credit existing on or expiring from Phone
3 Cards Issued in Washington.

4 **RESPONSE:**

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8 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents relating to the
9 expiration or lapsing of value or credit on Phone Cards based on dormancy or inactivity.

10 **RESPONSE:**

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14 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents relating to the
15 identity of all Consumers in Washington.

16 **RESPONSE:**

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20 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents relating to
21 revenues generated in association in any way with Your Products.

22 **RESPONSE:**

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1 DATED this 6th day of October, 2010.
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4

5 **NEWMAN & NEWMAN,**
6 **ATTORNEYS AT LAW, LLP**

7 By: 
8

Derek Linke, WSBA # 38314

Derek A. Newman, WSBA # 26967

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10 Attorneys for Plaintiff
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The Honorable Richard F. McDermott

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

CHRISTINA REEVES DUWORS, an individual, by herself and on behalf of all others similarly situated,

Plaintiff,

v.

TRACFONE WIRELESS, INC., a Delaware corporation; and WAL-MART STORES, INC., a Delaware corporation;

Defendants.

NO. 10-2-35173-6 SEA

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

1
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I. INTRODUCTION

1. Plaintiff Christina Duwors brings this cause of action individually and on behalf of a class of similarly-situated persons against Defendant TracFone Wireless, Inc. and Wal-Mart Stores, Inc. for selling pre-paid cell phone service gift cards which expire in violation of RCW § 19.240.010 *et seq.*, and other laws.

II. PARTIES

2. Plaintiff Christina Duwors is a consumer who purchased a TracFone pre-paid cell phone service gift card at a Wal-Mart store in Washington State.

3. Defendant TracFone Wireless, Inc. (hereinafter "TracFone") is a Delaware corporation with its principal place of business in Miami, Florida.

4. Defendant Wal-Mart Stores, Inc. (hereinafter "Wal-Mart") is a Delaware corporation with its principal place of business in Bentonville, Arkansas.

III. JURISDICTION AND VENUE

5. This Court has original jurisdiction over the subject matter of this action pursuant to RCW § 2.08.010.

6. This Court has personal jurisdiction over TracFone and Wal-Mart pursuant to RCW 4.28.185(a) because the causes of action alleged herein arise out of TracFone's and Wal-Mart's transaction of business in Washington, namely the sale of TracFone prepaid cell phone service gift cards in Washington.

7. This Court has personal jurisdiction over TracFone and Wal-Mart pursuant to RCW 4.28.185(b) because TracFone and Wal-Mart committed the tortious acts complained of herein in Washington.

8. This Court also has personal jurisdiction over TracFone because TracFone has continuous and systematic contacts with Washington. TracFone regularly sells mobile phones and related services to Washington consumers. On its website located at <<http://www.tracfone.com>>, TracFone boasts that it is America's largest "No-Contract" cellular service provider in the US with over 15 million subscribers. Defendant TracFone provides a substantial amount of products and services to Washington

1 consumers through its online retail websites located at <<http://www.tracfone.com>> and
 2 <<http://www.straighttalk.com>>. Defendant TracFone is the exclusive provider of pre-
 3 paid cell phone products and services in all of Wal-Mart's retail stores in Washington.

4 9. This Court also has personal jurisdiction over Wal-Mart because Wal-Mart
 5 has continuous and systematic contacts with Washington. Defendant Wal-Mart provides
 6 a substantial amount of products and services to Washington consumers through its
 7 website located at <<http://www.walmart.com>>. Defendant Wal-Mart operates
 8 approximately forty seven retail stores in Washington.

9 10. Venue is proper in King County pursuant to RCW § 4.12.025(1)(a) because
 10 TracFone and Walmart do business in King County.

11 11. Over 90% of the putative members of the Class are citizens of the state of
 12 Washington. The amount in controversy on Plaintiff's individual claim is less than
 13 \$75,000.

14 12. The total amount in controversy for all Class members' claims in this
 15 action, including recoverable damages and penalties, is less than \$5,000,000, exclusive of
 16 interest and costs, within the meaning of 28 U.S.C. § 1332(d).

17 IV. FACTS

18 13. TracFone sells prepaid no-contract service cards ("Phone Cards") for use
 19 with its Straight Talk-brand mobile phones. The Phone Cards are available to purchase in
 20 varying dollar values (i.e., a \$20 card, a \$30 card, etcetera).

21 14. TracFone is a provider of prepaid mobile phone services in Wal-Mart's
 22 Washington retail stores.

23 15. A customer may use a TracFone Phone Card to obtain service with a
 24 Straight Talk phone. The value on the Phone Card decreases as the consumer uses the
 25 phone.

26 16. However, to activate service, a consumer who purchases a TracFone Phone
 27 Card must first call a 1-800 number and key in a unique pin number affixed to that Phone
 28 Card.

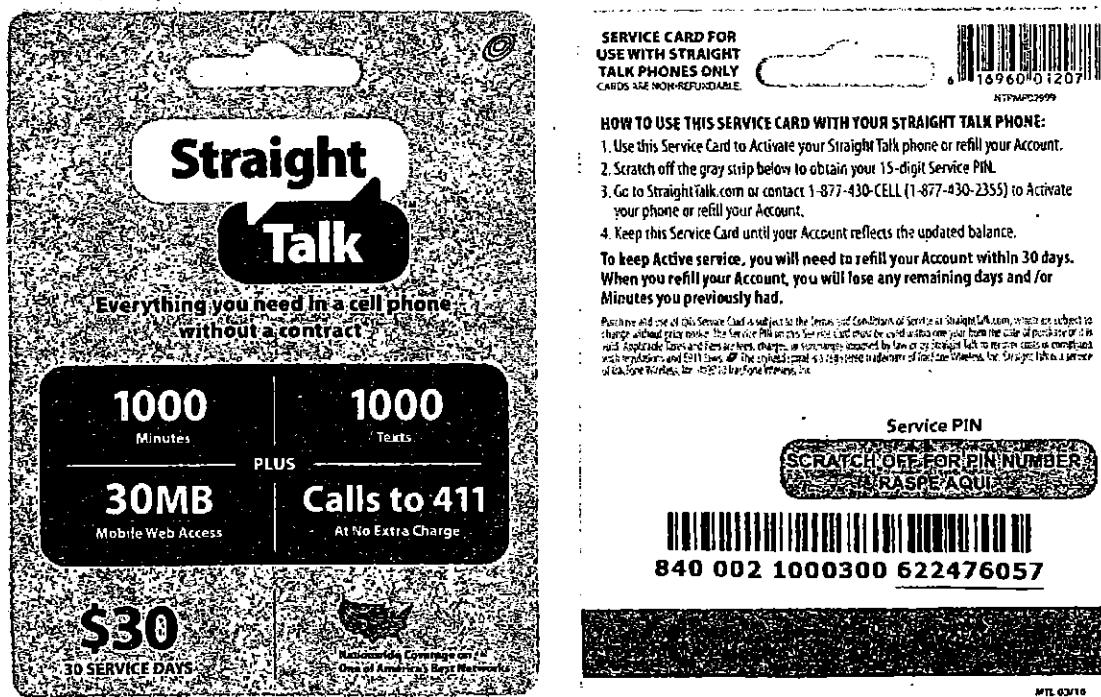
1 17. If a consumer does not activate her Phone Card within one year of
 2 purchase, the Phone Card expires and all of the value on the Phone Card is no longer
 3 available to the consumer.

4 18. In order to maintain active service, the customer must refill her Phone Card
 5 within thirty days of activation.

6 19. Any unused value at the time of refilling the customer's Phone Card are
 7 forfeited by the customer.

8 20. Plaintiff purchased a TracFone Phone Card from a Wal-Mart retail location
 9 in Washington.

10 21. The following is a true and correct copy of the TracFone Phone Card
 11 Plaintiff purchased:



22 22. Plaintiff is informed and believes, and on that basis alleges, that TracFone
 23 and/or Wal-Mart assert that her purchase of a Phone Card compels her to comply with an
 24 arbitration clause located on TracFone's website (the "Arbitration Clause").

25 23. Plaintiff is informed and believes, and on that basis alleges, that the
 26
 27 FIRST AMENDED COMPLAINT - 3

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP | 505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

1 Arbitration Clause purports to deprive her of the right to seek redress for TracFone's
 2 misconduct through a class action, and that it requires her to bear the costs of arbitrating
 3 her claims against TracFone in a jurisdiction other than where she was actually injured.

4 24. Plaintiff had no knowledge or reason to know of the Arbitration Clause at
 5 the time she purchased the Phone Card and she did not negotiate the arbitration clause or
 6 have a meaningful opportunity to do so.

7 25. Even if Plaintiff had the opportunity to negotiate the Arbitration Clause, she
 8 would have been unable to do so, as her bargaining power is greatly outweighed by
 9 Defendants' bargaining power.

10 26. To the extent that the Arbitration Clause constitutes a binding, valid
 11 contractual obligation, it is a contractual obligation of adhesion, and the manner in which
 12 it was formed was procedurally unconscionable.

13 27. The Arbitration Clause is also substantively unconscionable as it is harsh,
 14 unfair, burdensome, shocking to the conscience, and effectively deprives Plaintiff of any
 15 rights of redress against Defendants for their misconduct and any due process opportunity
 16 to be heard by an unbiased tribunal.

17 28. TracFone attempts to use the mandatory arbitration and class action waiver
 18 provisions to shield itself from customers' use of the judicial system to seek redress for
 19 its improper conduct. In TracFone were successful in this regard, the waiver would
 20 virtually immunize TracFone from responsibility for its misconduct. Such waivers are
 21 unconscionable under Washington law and should not be enforced.

22 V. CLASS ACTION ALLEGATIONS

23 29. Plaintiff brings this suit as a class action pursuant to CR 23(a), (b)(1),
 24 (b)(2), (b)(3) and/or (c)(4)(A), on behalf of herself and the following Class comprised of:

25 All persons who purchased a TracFone prepaid mobile card in Washington
 26 State.

27 30. Excluded from the Class are: (a) TracFone, any entity in which TracFone
 28 has a controlling interest or which has a controlling interest in TracFone; (b) Wal-Mart,

1 any entity in which Wal-Mart has a controlling interest or which has a controlling interest
 2 in Wal-Mart (c) TracFone's employees, agents, predecessors, successors or assigns; (d)
 3 Wal-Mart's employees, agents, predecessors, successors or assigns; (e) Plaintiff's
 4 attorneys and any member of Plaintiff's attorneys' immediate family; and (f) the judge
 5 and staff to whom this case is assigned, and any member of the judge's immediate
 6 family.

7 31. Plaintiff reserves the right to modify this class definition prior to moving
 8 for class certification.

9 32. This action has been brought and may be properly maintained as a class
 10 action pursuant to CR 23 for the following reasons:

- 11 a. The Class is ascertainable and there is a well-defined community of
 interest among the members of the Class because all Class members
 purchased TracFone Phone Cards.
- 12 b. On information and belief, there are a minimum of 100 members of
 the Class residing in different counties of the state of Washington
 including Kitsap County. Membership in the Class is so numerous
 and geographically dispersed as to make it impractical to bring all
 members of the Class before the Court because the identity and exact
 number of members of the Class is currently unknown but is
 estimated to be well in excess of 100.
- 13 c. Plaintiff's claims are typical of those of other members of the Class,
 all of whom have suffered harm due to TracFone's and Wal-Mart's
 course of conduct as alleged herein.
- 14 d. Plaintiff is a member of the Class because she purchased a TracFone
 Phone Card.
- 15 e. There are numerous and substantial questions of law and fact
 common to all members of the Class that control this litigation and
 predominate over any individual questions pursuant to CR 23(b)(3).

The common issues include, but are not limited to, the following:

- i. Whether TracFone issues or issued Phone Cards with value that automatically expires;
- ii. Whether Wal-Mart sells or sold Phone Cards with value that automatically expires;
- iii. Whether the conduct of TracFone and/or Wal-Mart constitutes or constituted unfair acts or practices under the Washington CPA;
- iv. Whether TracFone's and/or Wal-Mart's unfair conduct was or is committed in the course of their business;
- v. Whether TracFone's and/or Wal-Mart's unfair conduct causes or caused damage and injury to Plaintiff and the other members of the Class;
- vi. Whether TracFone and/or Wal-Mart have been unjustly enriched by receiving money by selling prepaid Phone Cards with value that automatically expired; and
- vii. The measure of equitable/injunctive relief or amount of damages that TracFone and/or Wal-Mart should be required to pay as a result of their actionable conduct.

1 will continue without remedy, and TracFone and/or Wal-Mart will
 2 continue to enjoy the fruits and proceeds of their unlawful conduct.

3 i. Given (1) the substantive complexity of this litigation; (2) the size of
 4 individual Class members' claims; and (3) the limited resources of
 5 the Class members, few, if any, Class members could afford to seek
 6 legal redress individually for the wrongs TracFone and/or Wal-Mart
 7 have committed against them.

8 j. This action will foster an orderly and expeditious administration of
 9 Class claims, will economize time, effort and expense, and will
 10 result in uniformity of decision because all matters will be resolved
 11 at one time with a minimum of legal fees and judicial resources.

12 k. This action presents no difficulty that would impede the Court's
 13 management of it as a class action, and a class action is the best
 14 and/or the only available means by which members of the Class can
 15 seek legal redress for the harm caused by TracFone and/or Wal-
 16 Mart.

17 33. The various claims asserted in this action are additionally or alternatively
 18 certifiable under the provisions of CR 23(b)(1) or 23(b)(2) because:

19 a. The prosecution of separate actions by hundreds of individual Class
 20 members would create a risk of inconsistent or varying adjudications
 21 with respect to individual Class members, thus establishing
 22 incompatible standards of conduct for TracFone and/or Wal-Mart;

23 b. The prosecution of separate actions by individual Class members
 24 would also create the risk of adjudications with respect to them that
 25 would, as a practical matter, be dispositive of the interests of the
 26 other Class members who are not a party to such adjudications and
 27 would substantially impair or impede the ability of such non-party
 28 Class members to protect their interests; and

1 c. TracFone and/or Wal-Mart have acted or refused to act on grounds
2 generally applicable to the entire Class, thereby making appropriate
3 final declaratory and injunctive relief with respect to the Class as a
4 whole. The claims brought by Plaintiff and the other members of the
5 Class all arise from substantially similar sets of facts and from
6 TracFone's and/or Wal-Mart's identical course of conduct.

7 34. The issues common to the Class members' claims, some of which are
8 identified above, are alternatively certifiable pursuant to CR 23(c)(4) as resolution of
9 these issues would materially advance the litigation, and class resolution of these issues is
10 superior to repeated litigation of these issues in separate trials.

11

12 **VI. FIRST CAUSE OF ACTION**
13 **(Gift Certificate Violations under RCW Ch. 19.240)**

14 35. Plaintiff incorporates by reference Paragraphs 1 through 34 above as
15 though fully set forth herein.

16 36. TracFone and Wal-Mart sell Phone Cards throughout Washington State.

17 37. Phone Cards are instruments containing value or credit in various amounts.

18 38. The value or credit associated with Phone Cards is primarily intended to be
19 exchanged for consumer services in the form of cellular phone service.

20 39. The Phone Cards automatically expire one year after purchase unless
21 activated by the purchaser in violation of RCW 19.240.020(1)(a).

22 40. Whether activated or not, Phone Cards are not returnable or redeemable for
23 any value.

24 41. Once a Phone Card is activated, it must be reloaded every thirty (30) days.

25 42. When a consumer reloads value onto a Phone Card, any previously
26 remaining balance is forfeited. Such mandatory forfeiture constitutes a fee in violation of
27 RCW 19.240.020(1)(b).

28 43. Plaintiff purchased a TracFone Phone Card from Wal-Mart in Washington
State.

1

VII. SECOND CAUSE OF ACTION
(Declaratory Relief—No Binding Agreement Between TracFone and Consumers)

2 44. Plaintiff incorporates by reference Paragraphs 1 through 43 above as
 3 though fully set forth herein.

4 45. TracFone sells Phone Cards to Washington consumers that purport to bind
 5 the consumer to certain terms and conditions available on TracFone's website, including
 6 an arbitration clause (the "TracFone Agreement").

7 46. That agreement also purports to impose on consumers an expiration date
 8 and fees, as described above, in violation of RCW Ch. 19.240.

9 47. Any agreement made in violation of the provisions of RCW Ch. 19.240 is
 10 contrary to public policy and is void and unenforceable under RCW 19.240.110.

11 48. A controversy exists as to whether the TracFone Agreement is enforceable,
 12 and as to whether it is supported by a valid offer and corresponding acceptance resulting
 13 in a binding agreement between the parties.

14 49. A declaration by the Court would terminate that controversy as between
 15 Plaintiff and the Class on the one hand and TracFone on the other hand.

16 50. The parties need the Court to settle, and to afford relief from, the
 17 uncertainty and insecurity that exists with respect to the rights, status, and other legal
 18 relations among them.

19 51. The parties' controversy is both substantial and of sufficient immediacy and
 20 reality to warrant the issuance of a declaratory judgment.

21 52. This Court has the power to declare the rights, status, and other legal
 22 relations between the parties pursuant to RCW 7.24.010.

23 53. Accordingly, Plaintiff requests that the Court issue a judgment declaring
 24 that the TracFone Agreement is contrary to public policy and void and unenforceable
 25 under Washington law, and also that it does not constitute an agreement of the parties to
 26 which they are bound.

1
2 **VIII. THIRD CAUSE OF ACTION**
3 **(Violations of the Washington Consumer Protection Act, RCW 19.86.020)**

4 54. Plaintiff incorporates by reference Paragraphs 1 through 53 above as
5 though fully set forth herein.

6 55. The Washington Consumer Protection Act, RCW Ch. 19.86, provides a
7 private right of action to any person injured in her property by "unfair or deceptive acts or
practices."

8 56. TracFone's and Wal-Mart's sale of Phone Cards in violation of public
9 policy and Washington law is an unfair act or practice.

10 57. TracFone's and Wal-Mart's sale of Phone Cards was committed in the
11 course of commerce.

12 58. TracFone's and Wal-Mart's sale of Phone Cards impacts the public interest
13 because it (a) injured other persons, (b) had the capacity to injure other persons, and/or
14 (c) has the capacity to injure other persons.

15 59. TracFone's and Wal-Mart's unfair acts and practices caused damage to
16 Plaintiff and other members of the Class.

17 60. Plaintiff seeks equitable/injunctive relief and damages on behalf of herself
18 and the other members of the Class for actual damages sustained as a result of
19 TracFone's and Wal-Mart's unfair acts or practices in an amount to be determined at trial
20 as well as the costs of this suit and reasonable attorneys' fees.

21 61. To the extent Plaintiff seeks monetary damages, Plaintiff also seeks treble
22 damages on behalf of herself and each Class member for his or her actual damages
23 sustained as a result of TracFone's and Wal-Mart's unfair acts in an amount to be
24 determined at trial.

1
2 **IX. FOURTH CAUSE OF ACTION**
3 **(Unjust Enrichment)**

4 62. Plaintiff incorporates by reference Paragraphs 1 through 61 above as
5 though fully set forth herein.

6 63. As a result of the conduct described above, Wal-Mart and TracFone have
7 been and will be unjustly enriched at the expense of Plaintiff and the other members of
8 the Class.

9 64. Specifically, Wal-Mart and TracFone's unfair and illegal actions as
10 described above have enabled Wal-Mart and TracFone to receive money in violation of
11 Washington law.

12 65. Wal-Mart and TracFone should be required to disgorge the money retained
13 as a result of their unjust enrichment.

14 **X. PRAYER FOR RELIEF**

15 Plaintiff requests the following relief:

16 (a) A determination that this action is a proper class action maintainable
17 pursuant to CR 23(a), (b)(1), (b)(2), (b)(3) and/or 23(c)(4)(A), and appointing Plaintiff as
18 representative of the Class.

19 (b) That the Court provide equitable and injunctive relief enjoining TracFone
20 and Wal-Mart from pursuing the policies, acts and practices described in this Complaint.

21 (c) The following damages on her individual claim in a total amount that is less
22 than \$75,000:
23 i. Compensatory damages; and
24 ii. Treble damages to the extent allowed under the Washington
25 Consumer Protection Act.

26 (d) The following award to the Class:
27 i. Disgorgement of money retained through unjust enrichment as set
28 forth above; and
29 ii. Compensatory damages under applicable law.

1 (e) An award of costs and disbursements incurred by Plaintiff in connection
2 with this action, including reasonable attorneys' fees pursuant to Washington's Consumer
3 Protection Act and other applicable laws.

4 (f) Plaintiff is not seeking any relief for herself or the class alleged herein
5 which would under any circumstances cause the "matter in controversy" in this action to
6 exceed the sum or value of \$5,000,000, exclusive of interest and costs, within the
7 meaning of 28 U.S.C. § 1332(d).

8 (g) Such other and further relief the Court deems just and proper.

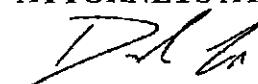
9 **XI. JURY DEMAND**

10 Plaintiff demands a trial by jury on all issues so triable pursuant to CR 38.

12 DATED this 6th day of October, 2010.

14 **NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

16 By:


Derek Linke, WSBA No. 38314
Derek A. Newman, WSBA No. 26967

18 Attorneys for Plaintiff

FILED

10 OCT 05 PM 2:53

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2 KING COUNTY
3 SUPERIOR COURT CLERK
4 E-FILED
5 CASE NUMBER: 10-2-35173-6 SEA

6

7

8 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
9 **IN AND FOR THE COUNTY OF KING**

10 CHRISTINA REEVES DUWORS, an
11 individual, by herself and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 TRACFONE WIRELESS, INC., a Delaware
16 corporation; and WAL-MART STORES,
17 INC., a Delaware corporation;

Defendants.

NO.

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

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I. INTRODUCTION

1. Plaintiff Christina Duwors brings this cause of action individually and on behalf of a class of similarly-situated persons against Defendant TracFone Wireless, Inc. and Wal-Mart Stores, Inc. for selling pre-paid cell phone service gift cards which expire in violation of RCW § 19.240.010 *et seq.*, and other laws.

II. PARTIES

2. Plaintiff Christina Duwors is a consumer who purchased a TracFone pre-paid cell phone service gift card at a Wal-Mart store in Washington State.

~3. Defendant TracFone Wireless, Inc. (hereinafter "TracFone") is a Delaware corporation with its principal place of business in Miami, Florida.

4. Defendant Wal-Mart Stores, Inc. (hereinafter "Wal-Mart") is a Delaware corporation with its principal place of business in Bentonville, Arkansas.

III. JURISDICTION AND VENUE

5. This Court has original jurisdiction over the subject matter of this action pursuant to RCW § 2.08.010.

6. This Court has personal jurisdiction over TracFone and Wal-Mart pursuant to RCW 4.28.185(a) because the causes of action alleged herein arise out of TracFone's and Wal-Mart's transaction of business in Washington, namely the sale of TracFone prepaid cell phone service gift cards in Washington.

7. This Court has personal jurisdiction over TracFone and Wal-Mart pursuant to RCW 4.28.185(b) because TracFone and Wal-Mart committed the tortious acts complained of herein in Washington.

8. This Court also has personal jurisdiction over TracFone because TracFone has continuous and systematic contacts with Washington. TracFone regularly sells mobile phones and related services to Washington consumers. On its website located at <<http://www.tracfone.com>>>, TracFone boasts that it is America's largest "No-Contract" cellular service provider in the US with over 15 million subscribers. Defendant TracFone provides a substantial amount of products and services to Washington

1 consumers through its online retail websites located at <<<http://www.tracfone.com>>> and
 2 <<<http://www.straighttalk.com>>>. Defendant TracFone is the exclusive provider of pre-
 3 paid cell phone products and services in all of Wal-Mart's retail stores in Washington.

4 9. This Court also has personal jurisdiction over Wal-Mart because Wal-Mart
 5 has continuous and systematic contacts with Washington. Defendant Wal-Mart provides
 6 a substantial amount of products and services to Washington consumers through its
 7 website located at <<<http://www.walmart.com>>>. Defendant Wal-Mart operates
 8 approximately forty seven retail stores in Washington.

9 10. Venue is proper in King County pursuant to RCW § 4.12.025(1)(a) because
 10 TracFone and Walmart do business in King County.

11 11. Over 90% of the putative members of the Class are citizens of the state of
 12 Washington. The amount in controversy on Plaintiff's individual claim is less than
 13 \$75,000.

14 12. The total amount in controversy for all Class members' claims in this
 15 action, including recoverable damages and penalties, is less than \$5,000,000, exclusive of
 16 interest and costs, within the meaning of 28 U.S.C. § 1332(d).

17 IV. FACTS

18 13. TracFone sells prepaid no-contract service cards ("Phone Cards") for use
 19 with its Straight Talk-brand mobile phones. The Phone Cards are available to purchase in
 20 varying dollar values (i.e., a \$20 card, a \$30 card, etcetera).

21 14. TracFone is a provider of prepaid mobile phone services in Wal-Mart's
 22 Washington retail stores.

23 15. A customer may use a TracFone Phone Card to obtain service with a
 24 Straight Talk phone. The value on the Phone Card decreases as the consumer uses the
 25 phone.

26 16. However, to activate service, a consumer who purchases a TracFone Phone
 27 Card must first call a 1-800 number and key in a unique pin number affixed to that Phone
 28 Card.

1 17. If a consumer does not activate her Phone Card within one year of
 2 purchase, the Phone Card expires and all of the value on the Phone Card is no longer
 3 available to the consumer.

4 18. In order to maintain active service, the customer must refill her Phone Card
 5 within thirty days of activation.

6 19. Any unused value at the time of refilling the customer's Phone Card are
 7 forfeited by the customer.

8 20. Plaintiff purchased a TracFone Phone Card from a Wal-Mart retail location
 9 in Washington.

10 21. The following is a true and correct copy of the TracFone Phone Card
 11 Plaintiff purchased:

12 22. Plaintiff is informed and believes, and on that basis alleges, that TracFone
 13 and/or Wal-Mart assert that her purchase of a Phone Card compels her to comply with an
 14 arbitration clause located on TracFone's website (the "Arbitration Clause").

15 23. Plaintiff is informed and believes, and on that basis alleges, that the
 16 Arbitration Clause purports to deprive her of the right to seek redress for TracFone's
 17 misconduct through a class action, and that it requires her to bear the costs of arbitrating
 18 her claims against TracFone in a jurisdiction other than where she was actually injured.

19 24. Plaintiff had no knowledge or reason to know of the Arbitration Clause at
 20 the time she purchased the Phone Card and she did not negotiate the arbitration clause or
 21 have a meaningful opportunity to do so.

22 25. Even if Plaintiff had the opportunity to negotiate the Arbitration Clause, she
 23 would have been unable to do so, as her bargaining power is greatly outweighed by
 24 Defendants' bargaining power.

25 26. To the extent that the Arbitration Clause constitutes a binding, valid
 26 contractual obligation, it is a contractual obligation of adhesion, and the manner in which
 27 it was formed was procedurally unconscionable.

28 27. The Arbitration Clause is also substantively unconscionable as it is harsh,

unfair, burdensome, shocking to the conscience, and effectively deprives Plaintiff of any rights of redress against Defendants for their misconduct and any due process opportunity to be heard by an unbiased tribunal.

28. TracFone attempts to use the mandatory arbitration and class action waiver provisions to shield itself from customers' use of the judicial system to seek redress for its improper conduct. In TracFone were successful in this regard, the waiver would virtually immunize TracFone from responsibility for its misconduct. Such waivers are unconscionable under Washington law and should not be enforced.

V. CLASS ACTION ALLEGATIONS

29. Plaintiff brings this suit as a class action pursuant to CR 23(a), (b)(1),
(b)(2), (b)(3) and/or (c)(4)(A), on behalf of herself and the following Class comprised of:

All persons who purchased a TracFone prepaid mobile card in Washington State.

30. Excluded from the Class are: (a) TracFone, any entity in which TracFone has a controlling interest or which has a controlling interest in TracFone; (b) Wal-Mart, any entity in which Wal-Mart has a controlling interest or which has a controlling interest in Wal-Mart (c) TracFone's employees, agents, predecessors, successors or assigns; (d) Wal-Mart's employees, agents, predecessors, successors or assigns; (e) Plaintiff's attorneys and any member of Plaintiff's attorneys' immediate family; and (f) the judge and staff to whom this case is assigned, and any member of the judge's immediate family.

31. Plaintiff reserves the right to modify this class definition prior to moving for class certification.

32. This action has been brought and may be properly maintained as a class action pursuant to CR 23 for the following reasons:

- a. The Class is ascertainable and there is a well-defined community of interest among the members of the Class because all Class members purchased TracFone Phone Cards.

- b. On information and belief, there are a minimum of 100 members of the Class residing in different counties of the state of Washington including Kitsap County. Membership in the Class is so numerous and geographically dispersed as to make it impractical to bring all members of the Class before the Court because the identity and exact number of members of the Class is currently unknown but is estimated to be well in excess of 100.
- c. Plaintiff's claims are typical of those of other members of the Class, all of whom have suffered harm due to TracFone's and Wal-Mart's course of conduct as alleged herein.
- d. Plaintiff is a member of the Class because she purchased a TracFone Phone Card.
- e. There are numerous and substantial questions of law and fact common to all members of the Class that control this litigation and predominate over any individual questions pursuant to CR 23(b)(3). The common issues include, but are not limited to, the following:
 - i. Whether TracFone issues or issued Phone Cards with value that automatically expires;
 - ii. Whether Wal-Mart sells or sold Phone Cards with value that automatically expires;
 - iii. Whether the conduct of TracFone and/or Wal-Mart constitutes or constituted unfair acts or practices under the Washington CPA;
 - iv. Whether TracFone's and/or Wal-Mart's unfair conduct was or is committed in the course of their business;
 - v. Whether TracFone's and/or Wal-Mart's unfair conduct causes or caused damage and injury to Plaintiff and the other members of the Class;

1 vi. Whether TracFone and/or Wal-Mart have been unjustly
 2 enriched by receiving money by selling prepaid Phone Cards
 3 with value that automatically expired; and
 4 vii. The measure of equitable/injunctive relief or amount of
 5 damages that TracFone and/or Wal-Mart should be required
 6 to pay as a result of their actionable conduct.

7 f. These and other questions of law and fact are common to the
 8 members of the Class and predominate over any individual questions
 9 affecting the Class.

10 g. Plaintiff will fairly and adequately protect the interests of the Class
 11 in that Plaintiff has no interests that are antagonistic to other
 12 members of the Class and has retained counsel competent in the
 13 prosecution of class actions to represent herself and the Class.

14 h. Without a class action lawsuit, the Class will continue to suffer
 15 damage, TracFone's and/or Wal-Mart's violations of the law or laws
 16 will continue without remedy, and TracFone and/or Wal-Mart will
 17 continue to enjoy the fruits and proceeds of their unlawful conduct.

18 i. Given (1) the substantive complexity of this litigation; (2) the size of
 19 individual Class members' claims; and (3) the limited resources of
 20 the Class members, few, if any, Class members could afford to seek
 21 legal redress individually for the wrongs TracFone and/or Wal-Mart
 22 have committed against them.

23 j. This action will foster an orderly and expeditious administration of
 24 Class claims, will economize time, effort and expense, and will
 25 result in uniformity of decision because all matters will be resolved
 26 at one time with a minimum of legal fees and judicial resources.

27 k. This action presents no difficulty that would impede the Court's
 28 management of it as a class action, and a class action is the best

1 and/or the only available means by which members of the Class can
2 seek legal redress for the harm caused by TracFone and/or Wal-
3 Mart.

4 33. The various claims asserted in this action are additionally or alternatively
5 certifiable under the provisions of CR 23(b)(1) or 23(b)(2) because:

- 6 a. The prosecution of separate actions by hundreds of individual Class
7 members would create a risk of inconsistent or varying adjudications
8 with respect to individual Class members, thus establishing
9 incompatible standards of conduct for TracFone and/or Wal-Mart;
- 10 b. The prosecution of separate actions by individual Class members
11 would also create the risk of adjudications with respect to them that
12 would, as a practical matter, be dispositive of the interests of the
13 other Class members who are not a party to such adjudications and
14 would substantially impair or impede the ability of such non-party
15 Class members to protect their interests; and
- 16 c. TracFone and/or Wal-Mart have acted or refused to act on grounds
17 generally applicable to the entire Class, thereby making appropriate
18 final declaratory and injunctive relief with respect to the Class as a
19 whole. The claims brought by Plaintiff and the other members of the
20 Class all arise from substantially similar sets of facts and from
21 TracFone's and/or Wal-Mart's identical course of conduct.

22 34. The issues common to the Class members' claims, some of which are
23 identified above, are alternatively certifiable pursuant to CR 23(c)(4) as resolution of
24 these issues would materially advance the litigation, and class resolution of these issues is
25 superior to repeated litigation of these issues in separate trials.

26
27 **VI. FIRST CAUSE OF ACTION**
(Gift Certificate Violations under RCW Ch. 19.240)

28 35. Plaintiff incorporates by reference Paragraphs 1 through 34 above as

1 though fully set forth herein.

2 36. TracFone and Wal-Mart sell Phone Cards throughout Washington State.

3 37. Phone Cards are instruments containing value or credit in various amounts.

4 38. The value or credit associated with Phone Cards is primarily intended to be
5 exchanged for consumer services in the form of cellular phone service.

6 39. The Phone Cards automatically expire one year after purchase unless
7 activated by the purchaser in violation of RCW 19.240.020(1)(a).

8 40. Whether activated or not, Phone Cards are not returnable or redeemable for
9 any value.

10 41. Once a Phone Card is activated, it must be reloaded every thirty (30) days.

11 42. When a consumer reloads value onto a Phone Card, any previously
12 remaining balance is forfeited. Such mandatory forfeiture constitutes a fee in violation of
13 RCW 19.240.020(1)(b).

14 43. Plaintiff purchased a TracFone Phone Card from Wal-Mart in Washington
15 State.

16

VII. SECOND CAUSE OF ACTION
(Declaratory Relief—No Binding Agreement Between TracFone and Consumers)

17 44. Plaintiff incorporates by reference Paragraphs 1 through 41 above as
18 though fully set forth herein.

20 45. TracFone sells Phone Cards to Washington consumers that purport to bind
21 the consumer to certain terms and conditions available on TracFone's website, including
22 an arbitration clause (the "TracFone Agreement").

23 46. That agreement also purports to impose on consumers an expiration date
24 and fees, as described above, in violation of RCW Ch. 19.240.

25 47. Any agreement made in violation of the provisions of RCW Ch. 19.240 is
26 contrary to public policy and is void and unenforceable under RCW 19.240.110.

27 48. A controversy exists as to whether the TracFone Agreement is enforceable,
28 and as to whether it is supported by a valid offer and corresponding acceptance resulting

1 in a binding agreement between the parties.

2 49. A declaration by the Court would terminate that controversy as between
3 Plaintiff and the Class on the one hand and TracFone on the other hand.

4 50. The parties need the Court to settle, and to afford relief from, the
5 uncertainty and insecurity that exists with respect to the rights, status, and other legal
6 relations among them.

7 51. The parties' controversy is both substantial and of sufficient immediacy and
8 reality to warrant the issuance of a declaratory judgment.

9 52. This Court has the power to declare the rights, status, and other legal
10 relations between the parties pursuant to RCW 7.24.010.

11 53. Accordingly, Plaintiff requests that the Court issue a judgment declaring
12 that the TracFone Agreement is contrary to public policy and void and unenforceable
13 under Washington law, and also that it does not constitute an agreement of the parties to
14 which they are bound.

15

VIII. THIRD CAUSE OF ACTION
(Violations of the Washington Consumer Protection Act, RCW 19.86.020)

16 54. Plaintiff incorporates by reference Paragraphs 1 through 51 above as
17 though fully set forth herein.

18 55. The Washington Consumer Protection Act, RCW Ch. 19.86, provides a
19 private right of action to any person injured in her property by "unfair or deceptive acts or
20 practices."

21 56. TracFone's and Wal-Mart's sale of Phone Cards in violation of public
22 policy and Washington law is an unfair act or practice.

23 57. TracFone's and Wal-Mart's sale of Phone Cards was committed in the
24 course of commerce.

25 58. TracFone's and Wal-Mart's sale of Phone Cards impacts the public interest
26 because it (a) injured other persons, (b) had the capacity to injure other persons, and/or
27 (c) has the capacity to injure other persons.

59. TracFone's and Wal-Mart's unfair acts and practices caused damage to Plaintiff and other members of the Class.

60. Plaintiff seeks equitable/injunctive relief and damages on behalf or herself and the other members of the Class for actual damages sustained as a result of TracFone's and Wal-Mart's unfair acts or practices in an amount to be determined at trial as well as the costs of this suit and reasonable attorneys' fees.

61. To the extent Plaintiff seeks monetary damages, Plaintiff also seeks treble damages on behalf of herself and each Class member for his or her actual damages sustained as a result of TracFone's and Wal-Mart's unfair acts in an amount to be determined at trial.

IX. FOURTH CAUSE OF ACTION (Unjust Enrichment)

62. Plaintiff incorporates by reference Paragraphs 1 through 59 above as though fully set forth herein.

63. As a result of the conduct described above, Wal-Mart and TracFone have been and will be unjustly enriched at the expense of Plaintiff and the other members of the Class.

64. Specifically, Wal-Mart and TracFone's unfair and illegal actions as described above have enabled Wal-Mart and TracFone to receive money in violation of Washington law.

65. Wal-Mart and TracFone should be required to disgorge the money retained as a result of their unjust enrichment.

X. PRAYER FOR RELIEF

Plaintiff requests the following relief:

(a) A determination that this action is a proper class action maintainable pursuant to CR 23(a), (b)(1), (b)(2), (b)(3) and/or 23(c)(4)(A), and appointing Plaintiff as representative of the Class.

(b) That the Court provide equitable and injunctive relief enjoining TracFone

1 and Wal-Mart from pursuing the policies, acts and practices described in this Complaint.

2 (c) The following damages on her individual claim in a total amount that is less
3 than \$75,000:

4 i. Compensatory damages; and

5 ii. Treble damages to the extent allowed under the Washington
6 Consumer Protection Act.

7 (d) The following award to the Class:

8 i. Disgorgement of money retained through unjust enrichment as set
9 forth above; and

10 ii. Compensatory damages under applicable law.

11 (e) An award of costs and disbursements incurred by Plaintiff in connection
12 with this action, including reasonable attorneys' fees pursuant to Washington's Consumer
13 Protection Act and other applicable laws.

14 (f) Plaintiff is not seeking any relief for herself or the class alleged herein
15 which would under any circumstances cause the "matter in controversy" in this action to
16 exceed the sum or value of \$5,000,000, exclusive of interest and costs, within the
17 meaning of 28 U.S.C. § 1332(d).

18 (g) Such other and further relief the Court deems just and proper.

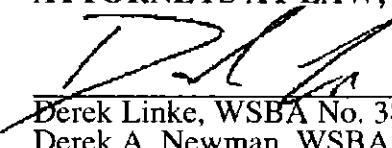
19 **XI. JURY DEMAND**

20 Plaintiff demands a trial by jury on all issues so triable pursuant to CR 38.

21
22 DATED this 5th day of October, 2010.

23
24 **NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

25 By:
26


Derek Linker, WSBA No. 38314
Derek A. Newman, WSBA No. 26967

27
28 Attorneys for Plaintiff

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP

505 Fifth Ave. S., Ste. 610
Seattle, Washington 98104
(206) 274-2800

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CHRISTINA REEVES DUWORS, an individual, by herself and on behalf of all others similarly situated, Plaintiff, v. TRACFONE WIRELESS, INC., a Delaware corporation; and WAL-MART STORES, INC., a Delaware corporation, Defendants.)
) NO. 10-2-35173-6 SEA
) NOTICE TO PLAINTIFF OF FILING OF
) NOTICE OF REMOVAL OF ACTION
) PURSUANT TO 28 U.S.C. §§ 1332, 1441,
) 1446 AND 1453
) (DIVERSITY JURISDICTION -- CLASS
) ACTION FAIRNESS ACT)

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that, pursuant to 28 U.S.C. § 1446(d), on November 3, 2010, Defendant TracFone Wireless, Inc. (“TracFone”) filed a Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453 (Diversity Jurisdiction—Class Action Fairness Act) in the United States District Court for the Western District of Washington, together with a copy of all process, pleadings and orders served upon TracFone.

A true and correct copy of the Notice of Removal is attached hereto as Exhibit "A" and is incorporated herein by this reference.

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**NOTICE TO PLAINTIFF OF FILING OF NOTICE OF
REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§
1332, 1441, 1446 AND 1453 - 1**

111655.0389/1928344.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

1 DATED: November 3, 2010
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3
4

5 LANE POWELL PC
6
7

8 By s/Rudy A. Englund
9 Rudy A. Englund, WSBA No. 04123
10 englundr@lanepowell.com
11 Mary S. Young, WSBA No. 33173
12 youngm@lanepowell.com
13 Attorneys for Tracfone Wireless, Inc., a
14 Delaware corporation
15
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NOTICE TO PLAINTIFF OF FILING OF NOTICE OF
REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§
1332, 1441, 1446 AND 1453 - 2

111655.0389/1928344.1

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LANE POWELL PC
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SEATTLE, WASHINGTON 98101-2338
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5
6
7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 CHRISTINA REEVES DUWORS, an individual, by herself and on behalf of all others similarly situated, }
9) NO. 10-2-35173-6 SEA
10 Plaintiff, } NOTICE TO SUPERIOR COURT OF
11 v. } FILING OF NOTICE OF REMOVAL OF
12 TRACFONE WIRELESS, INC., a Delaware corporation; and WAL-MART STORES, INC., a Delaware corporation, } ACTION PURSUANT TO 28 U.S.C. §§ 1332, 1441, 1446 AND 1453
13) (DIVERSITY JURISDICTION -- CLASS ACTION FAIRNESS ACT)
14 Defendants. }

15 TO THE CLERK OF THE ABOVE-CAPTIONED COURT:

16 NOTICE IS HEREBY GIVEN that, pursuant to 28 U.S.C. § 1446(d), on November 3,
17 2010, Defendant TracFone Wireless, Inc. ("TracFone") filed a Notice of Removal of Action
18 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453 (Diversity Jurisdiction—Class Action
19 Fairness Act) in the United States District Court for the Western District of Washington,
20 together with a copy of all process, pleadings and orders served upon TracFone.

21 A true and correct copy of the Notice of Removal is attached hereto as Exhibit "A"
22 and is incorporated herein by this reference.
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NOTICE TO SUPERIOR COURT OF FILING OF
NOTICE OF REMOVAL OF ACTION PURSUANT TO
28 U.S.C. §§ 1332, 1441, 1446 AND 1453 - 1

111655.0389/1928335.1

LANE POWELL PC
1420 FIFTH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
206.223.7000 FAX: 206.223.7107

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EXHIBIT 3

1 DATED: November 3, 2010
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LANE POWELL PC

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9 Attorneys for Tracfone Wireless, Inc., a
10 Delaware corporation

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NOTICE TO SUPERIOR COURT OF FILING OF
NOTICE OF REMOVAL OF ACTION PURSUANT TO
28 U.S.C. §§ 1332, 1441, 1446 AND 1453 - 2

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